

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE

45 Fremont Street, 21st Floor
San Francisco, California 94105

**NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC
HEARING**

File No. RH 04039178

Notice Date: July 29, 2004

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates to be effective January 1, 2005

SUBJECT OF HEARING

Notice is hereby given that the Insurance Commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization; (2) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan-1995; (3) amendments to the Miscellaneous Regulations for the Recording and Reporting of Data; and (4) amendments to the California Workers' Compensation Experience Rating Plan-1995. The hearing will be held in response to a filing, submitted on July 28, 2004, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB").

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. These regulations were promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the Insurance Commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the Insurance Commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the Insurance Commissioner. Accordingly, the pure premium rates issued or approved by the Insurance Commissioner are advisory only.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a), 11750.3(c) and 11753.3, a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the Insurance Commissioner for review.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

**September 15, 2004 – 9:30 AM
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California**

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734(b) and 11751.5, the Insurance Commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the Insurance Commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan-1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan-1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan-1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan-1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the Insurance Commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the Insurance Commissioner

30 days prior to its use and is not disapproved by the Insurance Commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the uniform statistical reporting plan or the classification system developed by the WCIRB and approved by the Insurance Commissioner.

The pure premium rate revision amendments to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, which contains the standard classification system developed by the WCIRB, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan–1995, are detailed in the WCIRB's filing letter and summarized below.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective January 1, 2005, with respect to new and renewal policies with anniversary rating dates on or after January 1, 2005. The proposed advisory pure premium rates are, on average, 3.5% greater than the July 1, 2004 advisory pure premium rates approved by the Insurance Commissioner.

The proposed pure premium rates applicable to 2005 policies are based on (a) insurer losses incurred during 2003 and prior accident years valued as of March 31, 2004, (b) insurer loss adjustment expenses for 2003 and prior years, (c) the cost impact of recent reform legislation (AB 749, AB 227, SB 228, and SB 899) on 2005 policies, and (d) classification payroll and loss experience reported for policies issued during 2001 and prior years.

AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN–1995

The WCIRB recommends the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, which includes the standard classification system and unit statistical reporting requirements, as well as policy document filing requirements and general administrative procedures. These changes are proposed to become effective January 1, 2005, with respect to new and renewal policies with anniversary rating dates on or after January 1, 2005.

- Amend the minimum and maximum annual payroll for executive officers, partners, and sole proprietors to increase the maximum from \$81,900 to \$84,500 and the minimum from \$29,900 to \$31,200, as well as to other payroll limitations relevant to specific classifications (e.g., athletic teams, entertainment classifications, taxicabs, etc.), to reflect wage inflation since the last time these amounts were adjusted.

- Amend the thresholds in the dual wage painting classifications by \$1 to reflect wage inflation since the last time the thresholds were amended.
- Amend the Complaints and Appeals regulations for clarity.
- Amend to define the term “companion classification;” clarify that operations classified as companion classifications constitute a single enterprise; and stipulate that unless specifically permitted by the classification phraseology or footnote, division of a single employee’s payroll between related companion classifications is not permitted.
- Amend to specify how clerical office employees are to be classified in connection with classifications that include clerical office employees in their phraseology.
- Amend to reflect a 25% threshold for combination gasoline stations and store.
- Amend the classifications for private schools to establish: (1) separate companion classifications for primary and secondary private schools; (2) separate companion classifications for private colleges and universities; (3) a separate classification for living skills centers; (4) a separate classification for adult day care centers; and (5) a separate classification cross-reference to Classification 9053 for dance, gymnastic, and martial arts studios.
- Amend to add a new classification cross-reference to Classification 8859 for internet software services.
- Amend the classification for video post production to create a new cross-reference phraseology for audio post production.
- Amend the classification for freight handlers for clarity and establish a new cross-reference phraseology for freight forwarders.
- Amend to define Insolvent Insurer Rating Adjustment Factor and specify that such credits and debits are to be included in the final premium reported on unit statistical reports.
- Amend to reflect AB 227’s repeal of the Labor Code provisions providing vocational rehabilitation and the enactment of the Labor Code provisions providing for a supplemental job displacement benefits.

AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA

The WCIRB recommends the following revisions to the Miscellaneous Regulations for the Recording and Reporting of Data to become effective with respect to new and renewal policies with anniversary rating dates on or after January 1, 2005:

- Amend the Complaints and Appeals regulations for clarity.
- Amend to define Insolvent Insurer Rating Adjustment Factor and specify that the WCIRB is authorized to provide specified data to insurers for use in calculating a Rating Adjustment Factor.

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN-1995

The WCIRB recommends the following revisions to the California Workers' Compensation Experience Rating Plan-1995 to become effective January 1, 2005, with respect to new and renewal policies with anniversary rating dates on or after January 1, 2005:

- Amend the Experience Rating Eligibility from \$28,737 to \$30,100 to reflect wage inflation and the proposed January 1, 2005 pure premium rate change.
- Amend the Status and Combination of Entities rule to clarify the provisions regarding the 90-day time period.
- Amend the Employee Leasing rule to permit the name of the client as well as the name of the labor contractor to be shown in Item 1 of the policy. Specific language amending the Employee Leasing rule will be submitted into the record prior to the public hearing with respect to this filing.
- Amend the Plan to delete Section V, Rule 7, "Experience Modifications That Exclude Data From an Insolvent Insurer" to eliminate ambiguity.
- Amend the Complaints and Appeals regulations for clarity.
- Amend the expected loss rates, D-ratios, and the average death value effective January 1, 2005 to reflect more current experience.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner has determined that there will be no cost or savings and there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on housing costs.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has determined that the proposed regulations will not have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations will not have a significant effect on private persons or entities.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attention: Larry C. White, Senior Staff Counsel
45 Fremont Street, 24th Floor
San Francisco, California 94105
(415) 538-4423

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above no later than 5:00 PM on September 15, 2004.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of

Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing, and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at www.wcirbonline.org/filings.

ACCESS TO RULE MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 45 Fremont Street, San Francisco, California 94105, between the hours of 9:30AM and 4:30 PM, Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

Dated: July 29, 2004

JOHN GARAMENDI
Insurance Commissioner

By _____
Larry C. White
Senior Staff Counsel

